



**Northeast Organic Farming Association  
of New York, Inc.  
Organic Certification Program**

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September 8, 2000

Beth Hayden  
Agricultural Marketing Specialist  
National Organic Program  
USDA/AMS/TM/NOP  
Room 2510 So. Ag Stop 0268  
PO Box 96456  
Washington, DC 20090-6456

Re: TM-00-07  
RIN 0581-AA40  
National Organic Program, Provision of Reasonable Security

Dear Ms. Hayden:

The NOFA-NY Certification Program primarily certifies many small farms, which market directly to their customers. While we feel that Certification Programs need to be accountable and operate in an appropriate manner, we do not feel that certification programs should be required to either post a bond of several thousand dollars, or obtain a letter of credit for large sums of money. The funds expended to do this would necessarily be passed along to clients we certify.

The last proposed rule contained explicit requirements for certifiers who ceased operation for whatever reason, and required the transfer of records to the Secretary. This is certainly appropriate.

In order to certify the USDA must accredit us. Since any clients certified at the time the certifier ceased operation, would have valid certificate, issued by an accredited certifier, we would have fulfilled our responsibility to our client. It seems that we are being asked to protect clients from any cessation of our operation. This is an unrealistic request. Businesses cease operation all the time. In addition, there is no guarantee that a state certification program would not do the same as programs are slashed in state government budgets all the time.

We are asking the NOP to clarify what types of risks were envisioned when the language was included in the OFPA. There has not been clarification on this from the USDA.

We feel that should a certifier cease operation, the only risk to clients, in relation to protection of their rights, would be that their records would not be transferred to the Secretary. Coverage for this type of activity need only be minimal.

Language in the Preamble of the Proposed Rule indicates that certifiers should pay for the "anticipated costs of certification that may be incurred by its clients in the event that the certifying agent's accreditation is suspended or revoked". This is an unrealistic requirement, as many small certifiers would not be able to afford this requirement. Again, we point to the fact that a client would have a valid certificate, issued by an accredited certifier, that should be honored by the USDA, until the applicant can obtain certification with another agency.

There are other types of risks in certification, of course, namely, errors made by the agent. However, these do not and should not involve the USDA or the Secretary. Protection for this type of activity would be an internal organizational decision. Since many small organizations should have this type of insurance in order to protect their volunteers, and in the long run their clients, this should be taken into account. NOFA-NY does have an Errors and Omissions policy, and that one policy costs \$3,000 annually. This is a large cost to absorb. Additional fees for client protection should not be levied.

Our responses to your specific questions are as follows:

1. We feel that the only risk to clients is if the Certification agent ceases to exist. The NOP can focus on providing very clear requirements for transfer of records to the Secretary in this case. A plan for such transfer should be included in the Accreditation requirements.
2. There should be minimal financial requirements necessary in the event an agent ceases business. The only costs associated should be the costs of transfer of the records. A one-time deposit with USDA could accommodate coverage for these costs.
3. Dollar amounts for transfer of records should be on a sliding scale dependent upon the number of clients in the certification program. For a smaller certifier, \$500 should be more than adequate to cover these costs.
4. This is a difficult question to answer. There is no information either in the act, or in the Proposed Rule, regarding what "protecting the rights of participants in an organic certification program" means. If it simply means providing access to the participants records in the event a certifier ceases operation, then this can be covered by the required transfer of records. If protection of rights means compensating participants for failure to continue business, this could not be done by small certification programs.

We ask that the NOP provide clarification on what "protecting the rights of participants in an organic certification program" means. Examples should be given.

5. We do not believe certifiers should provide compensation to participants in the event the certifier ceases operation. Certifiers should be required to provide any and all assistance in the transference of records, but that should be the extent of compensation.
6. We would instinctively say Yes to this question, however, as pointed out in # 4, "reasonable security" and "protecting the rights of participants in an organic certification program" does not have clear meaning. Smaller certifiers could address this with a waiver of liability signed by clients.

We thank you for this opportunity, and look forward to receiving the clarifications noted in # 4 above.

Sincerely,

  
Patricia Kane  
Administrator